

[REDACTED]

May 10, 1991

BY MESSENGER

Victor Cohen, Esquire
Federal Trade Commission
6th & Pennsylvania Avenue, N.W.
Room 301
Washington, D.C. 20580

Dear Victor:

This is to confirm our telephone conversation yesterday that the following proposed transaction is not reportable under the Hart-Scott-Rodino Antitrust Improvement Act:

Assume that Company X and Company Y meet the size of the parties test. Company X proposes loaning Company Y \$3 million until December 15, 1991 at a rate of prime plus 1%. Company X has the option to loan Company Y an additional \$3.5 million on December 15, 1991. In the event that Company X exercises its option on December 15, 1991, the combined \$6.5 million loan will be at prime plus 1% for an indefinite term. In addition to this interest payment, Company X would be entitled to 50% of the net profits derived from the operating cash flow of Company Y. Company X will have the right to vote stock proxies in certain specific circumstances, such as: (1) at the option of Company X to force a sale of the assets of Company Y; and (2) to veto any consideration by Company Y of filing for voluntary bankruptcy. Company X will not have any rights regarding the appointment of directors in Company Y except to the extent that the removal or appointment of directors may be required to force Company Y to be sold.

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As we discussed, Company X would not be considered as "controlling" Company Y after the transaction occurs by virtue of the entitlement to 50% of the net profits of Company Y or to the right to vote stock proxies in the limited circumstances specified. Furthermore, since the purchase of cash (such as the net profits of Company Y) is not considered an "asset", the "purchase" of these rights by Company X would not be a reportable event.

Please contact me immediately if I have in any way misunderstood your analysis of this matter. Thank you for your assistance.

Sincerely,

